



2024 : DHC : 215



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **RSA 6/2024 & CM APPL. 1569/2024, CM APPL. 1570/2024**

AGV FENESTRATION PVT. LTD. Appellant

Through: Mr. Arjun Mohan, Mr. Pulkit
Prakash, Mr. Saimon Farooqui, Mr.
Shubhashish Sharma and Mr. Chirantan
Krishna, Advs.

versus

M/S. DELMEN NETS Respondent

Through: Mr. Shyam Babu and Mr.
Mohit Gulati, Adv.

CORAM:

HON'BLE MR. JUSTICE C. HARI SHANKAR

JUDGMENT (ORAL)

% **10.01.2024**

1. This is a second appeal under Section 100 of the Code of Civil Procedure, 1908 (CPC).
2. The first appeal, filed by the present appellant, was dismissed on the ground of delay by the impugned judgment dated 29 November 2023 passed by the learned Additional District Judge ("the learned ADJ").
3. The prayer for condonation of delay, as urged by the present appellant before the learned ADJ, was found to be bereft of merit.
4. The order of the learned trial court was passed on 14 December

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2021. The time for filing the first appeal against the said order expired, therefore, in or around 14 January 2022. By operation of orders passed by the Supreme Court in ***Re: Cognizance for Extension of Limitation***¹, the period of 30 days could, at best, have been extended beyond 28 February 2022. Even by that reckoning, the outer limit for filing the first appeal expired on 28 March 2022. The appeal came to be filed on 29 November 2023.

5. Before the learned ADJ, the only grounds advanced by the appellant, for condonation of the clearly inordinate delay between 28 March 2022 and 29 November 2023 in filing the appeal are contained in para 3 of the application, which may be reproduced thus:

“03. That there has been a delay of 539 days in filing the accompanying Appeal due to the reasons enumerated hereinbelow:

- i. That the Appellant, like every other litigant, was severely affected by Covid-19 pandemic till 28.02.2022, due to which the Appeal could not be filed earlier.
- ii. That the previous counsel, engaged by the Appellant, did not provide the Appellant with the requisite documents till date.
- iii. That the Appellant has been judiciously pursuing the Execution Petition by participating in the same since 09.09.2022.
- iv. That the present Ld. Counsel for the Appellant in the meantime were figuring out the previous relevant documents to contest the Execution Petition. However, the director of the Appellant - Shri Vinod Kumar Sharma was facing certain health issues which unfortunately led to his untimely death on 18.08.2023, due to which the Appellant was further withheld from filing the Appeal sooner.

A Copy of the Death Certificate of Shri. Vinod Kumar



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Sharma - Director of the Appellant is herewith attached and annexed as "Annexure A".

v. That the Appellant was fully emersed in contesting the case before the Ld. Execution Court up until 17.11.2023, when the Ld. Execution Court rejected the objections preferred by the Appellant against the Execution Petition.”

6. If one peruses these reasons, it is clear that there is absolutely no justification for the delay in filing the first appeal.

7. The appellant cannot, quite obviously, be allowed to place the blame on the earlier counsel for not having provided the relevant documents till the time the appellant filed the first appeal. There is nothing to indicate that the appellant ever communicated with the earlier counsel in that regard.

8. It is further admitted that the appellant was participating in the execution petition filed by the respondent since 9 September 2022. In other words, at least since 9 September 2022, the appellant was aware of the order passed by the learned Trial Court as far back as on 14 December 2021.

9. The first appeal was filed after more than a year even from the said date.

10. This delay has been sought to be explained away by the contending that the counsel for appellant “were figuring out the previous relevant documents to contest the execution petition” and that the Director of the appellant had health issues owing to which he



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expired on 18 August 2023.

11. Even between 9 September 2022 and 18 August 2023, the delay is of almost a year – totally unexplained.

12. It is clear that, there is no satisfactory explanation for the inordinate delay in approaching the learned ADJ in first appeal.

13. The impugned order, qua the aspect of delay, reads thus:

“In the present application, it is to be noted that the reasons given are that the Appellant was affected by Covid-19 pandemic till 28.02.2022. The previous Counsel, it is averred, did not provide the Appellant with the required documents till date. The Appellant is stated to have been pursuing the execution petition filed by the Respondents for execution of the impugned decree since 09.09.2022. The Ld. Counsel for Appellant was also trying to figure out the previous relevant documents to contest the execution petition. Meanwhile, the Director of the Appellant company expired on 18.08.2023. However, as the Appellant was fully immersed in contesting the case before the executing Court till 17.11.2023 on which date the executing Court rejected the objections of the Appellant, the appeal could not be filed till date.

In my opinion, none of the reasons given are persuasive enough or genuine. The Appellant company has been well aware of the decree passed against them. They have been aware about the execution proceedings for more than one year. While the length of the delay would not be the sole deciding factor, it is pertinent to note that the decree was passed on 14.10.2021 and even if, the Covid period is taken out of the equation, even subsequently, there is a huge delay in filing the need not be given but rather the reason for delay must be genuine, bonafide and convincing. However, at the same time, if the delay is substantial and there is no explanation for the same, the delay should not be condoned.

In the present application, it is to be noted that the reasons given are that the Appellant was affected by Covid-19 pandemic till 28.02.2022. The previous Counsel, it is averred, did not provide the Appellant with the required documents till date. The Appellant is stated to have been pursuing the execution petition filed by the Respondents for execution of the impugned decree since

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09.09.2022. The Ld. Counsel for Appellant was also trying to figure out the previous relevant documents to contest the execution petition. Meanwhile, the Director of the Appellant company expired on 18.08.2023. However, as the Appellant was fully immersed in contesting the case before the executing Court till 17.11.2023 on which date the executing Court rejected the objections of the Appellant, the appeal could not be filed till date.

In my opinion, none of the reasons given are persuasive enough or genuine. The Appellant company has been well aware of the decree passed against them. They have been aware about the execution proceedings for more than one year. While the length of the delay would not be the sole deciding factor, it is pertinent to note that the decree was passed on 14.10.2021 and even if, the Covid period is taken out of the equation, even subsequently, there is a huge delay in filing the present appeal which has not been explained. The mere pendency of objections before the executing Court cannot be a ground for not filing the appeal. It appears that the present Appellant is a litigant who is aware about the rights and taking the limitation period for granted. Once the Appellant was aware that the decree had been passed, an appeal should have been filed within a reasonable period. However, even that reasonable period has been long surpassed and resulted in an extreme delay of more than 500 days in filing the appeal. Moreover, the Appellant has resorted to blaming the previous Counsel for the delay.

In *Bakeer Bhai v. Yashwant Gupta*², the Hon'ble High Court of Delhi held as under:

“the litigant owes a duty to be vigilant of his rights and is also expected to be equally vigilant about the judicial proceedings pending in the court of law against him. The litigant cannot be permitted to case the entire blame on the Advocate. It appears that the blame is being attributed on the Advocate with a view to get the delay condoned and avoid the decree. After filing the civil suit or written statement, the litigant cannot go off to sleep and wake up from a deep slumber after passing a long time as if the court is storage of the suits filed by such negligent litigants. Putting the entire blame upon the advocate and trying to make it out as if they were totally unaware of the nature or significance of the proceedings is a theory put forth by the appellant/applicant/defendant company, which cannot be accepted and ought not to have been accepted. The appellant is not a simple or rustic illiterate person but a



Private Limited Company managed by educated businessmen, who know very well where their interest lies. The litigant is to be vigilant and pursue his case diligently on all the hearing. If the litigant does not appear in the court and leaves the case at the mercy of his counsel without caring as to what different frivolous pleas/defences being taken by his counsel for adjournments is bound to suffer. If the litigant does not turn up to obtain the copies of judgment and orders of the court so as to find out what orders are passed by the court is liable to bear the consequences.”

The present Appellant is a corporate entity who is supposed to be aware and vigilant about their rights. They were fully contesting the execution proceedings for more than one year before filing of the present appeal as would be apparent from their own application. While there is no doubt that the Courts should endeavor to do substantial justice, however, the limitation period for filing an appeal cannot be done away with at the behest of a litigant who lacks bonafides or fails to furnish a genuine reason for the delay in filing the appeal.

The present is such a case where no sufficient reasons have been assigned for the delay in filing the appeal, which would be apparent from a reading of the application itself and no notice is required to be issued in such cases. Therefore, the application is dismissed in *limine* under the powers of this Court under Order XLI R 3A (2) of CPC. Consequently, the appeal, being time barred, is also dismissed.”

14. A litigant who approaches the first appellate Court after unexplained inordinate delay cannot, thereafter, approach this Court by means of a second appeal and seek to urge that substantial questions of law arise for consideration.

15. Allowing such a procedure would be permitting the litigant to use Section 100 of the CPC to overcome the period of limitation stipulated for filing the first appeal. This, in my view, would be impermissible. A litigant cannot leap directly from the trial Court to



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the High Court.

16. No substantial question of law arises, therefore, for consideration in the present case. The appeal is dismissed.

C. HARI SHANKAR, J.

JANUARY 10, 2024

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Click here to check corrigendum, if any